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IN THE

**Supreme Court of the United States**

**OCTOBER TERM, 1950**

**298,**

No. **299,**

**314**

**314, 324**

**LEO ZITTMAN** (with whom the Federal Reserve Bank of  
New York was impleaded below),

*Petitioner,*

against

**J. HOWARD McGRATH**, Attorney General, as Successor to  
the Alien Property Custodian,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT**

**JOSEPH M. COHEN,**

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LEO ZITTMAN (with whom the Federal Reserve Bank of  
New York was impleaded below),

*Petitioner,*

against

J. HOWARD McGRATH, Attorney General, as Successor to  
the Alien Property Custodian,<sup>1</sup>

*Respondent.*

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**PETITION FOR WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT**

*To the Honorable, the Chief Justice and Associate Justices  
of the Supreme Court of the United States:*

Your petitioner, Leo Zittman, respectfully prays that a writ of certiorari issue to the United States Court of Appeals for the Second Circuit to review the judgment of that court, dated June 2, 1950, made in the above cause.

This petition is a companion to the petition filed concurrently herewith, entitled, "Leo Zittman (with whom The Chase National Bank of the City of New York was impleaded below), petitioner, against J. Howard McGrath, Attorney General, as Successor to the Alien Property Cus-

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<sup>1</sup> J. Howard McGrath was substituted in the Court of Appeals for Tom C. Clark, as Attorney General.



todian, respondent".<sup>2</sup> For purposes of convenience, the latter will be referred to as the "Chase case".

### Opinions Below

The opinion of the District Court for the Southern District of New York is reported at 82 F. Supp. 740. The opinion of the Court of Appeals for the Second Circuit is *per curiam* and is reported at 182 F. 2d 349 (IIR p. 99).<sup>3</sup>

### Jurisdiction

The judgment below was rendered June 2, 1950 (IIR p. 265). Petition for rehearing was filed June 15, 1950 and denied on June 27, 1950 (IIR p. 122). Jurisdiction of this Court is invoked under Title 28 of the United States Code, § 1254. The original record and requisite copies are on file in this Court.

### Statutes Involved

1. The Congressional Joint Resolution of May 7, 1940, amending § 5(b) of the Trading with the Enemy Act and the relevant portions of Executive Order 8389, as amended, issued pursuant thereto.
2. The New York Civil Practice Act.
3. The New York Judiciary Law.

<sup>2</sup> The respondent filed two separate proceedings in the District Court. One related to certain accounts maintained with the Federal Reserve Bank of New York. The other related to certain accounts maintained with the Chase National Bank. Each bank was a party to only that proceeding which involved the particular accounts maintained with it. Though the two cases were heard on separate records and briefs and resulted in separate judgments below, they were dealt with by a single opinion both in the District Court and in the Court of Appeals. Neither bank appealed from the judgment of the District Court.

<sup>3</sup> The record in the Chase case and in the instant case have been bound together and designated Parts I and II, respectively. Record references are as follows: "IR" refers to the record of the Chase case; "IIR" refers to the record of the instant case. Except where indicated otherwise, references are to folios.

The relevant portions of the above-mentioned statutes are set out in the Appendix (pp. 23-24 and 26-30) to the petition for certiorari in the Chase case, to which the Court is respectfully referred.

### Summary Statement of the Matter Involved

This case involves essentially the same matter and issues as are involved in the Chase case. Though there are several factual differences (noted, *infra*, under the heading "Questions Involved"), the courts below treated this case as involving the same issues as are present in the Chase case. In our view, this treatment was correct.

### Questions Involved

This case arises out of the same state court attachment proceeding as is involved in the Chase case. In his state court attachment suit against the two German banks,<sup>4</sup> petitioner attached the following:

(1) The accounts maintained by both banks with the Chase National Bank of the City of New York. These are the subject of the Chase case.

(2) The accounts maintained by the Reichsbank with the Federal Reserve Bank of New York. These are the subject of the instant case.<sup>5</sup>

Since the facts of the two cases are essentially the same, they are not repeated here. To avoid duplication, the Court is respectfully referred to the statement made in the Chase

<sup>4</sup> The Reichsbank and the Deutsche Golddiskontbank.

<sup>5</sup> The Chase accounts were attached on December 11, 1941, at 2:41 P. M., E. S. T. (IR 269). The Federal Reserve accounts were attached on the same day at 2:20 P. M., E. S. T. (IIR 230).

case. There are, however, the following factual distinctions between the two cases:

(1) The Chase case deals with petitioner's attachment only insofar as it was levied on the Chase accounts. The instant case deals with the same attachment but only insofar as it was levied on the Federal Reserve accounts.

(2) The Custodian vested the attached Chase accounts by a "right, title and interest" vesting order. He vested the attached Federal Reserve accounts by a "res" vesting order.

(3) The Custodian sued in the Chase case for a declaration that he was entitled to the whole of the Chase accounts. He sued in the instant case only for a declaration that he is entitled to possession of the Federal Reserve accounts.

In the Chase case, petitioner asserted that his "right, title and interest" vesting order invested him with every right in the attached Chase accounts, to the exclusion of petitioner because, as he alleged, petitioner's attachment was void by reason of the freezing controls. In the instant case, petitioner asserted that his "res" vesting order invested him with a single right, i.e., the right to possession of the attached Federal Reserve account, notwithstanding petitioner's attachment. Since, in the Chase case, the courts below determined that petitioner's attachment is void and that, therefore, respondent is entitled to all rights to the attached accounts, this adjudication necessarily required the holding that respondent is entitled to prevail in the lesser claim made here, namely, that he is entitled to possession of the attached Federal Reserve accounts.<sup>6</sup>

<sup>6</sup> Respondent did argue below that he was entitled to a decree in the District Court declaring his right to possession of the Federal Reserve accounts solely by reason of his "res" vesting order (on the authority of such cases as *Union Trust Co. v. Garvan*, 254 U. S. 554; *Commercial Trust Co. v. Miller*, 262 U. S. 51) in disregard of the



Both the District Court and the Court of Appeals treated the two cases as involving the same questions and each court decided both in a single opinion. We concur in the view that both cases raise the same issues. To avoid duplication, we respectfully refer this Court to the petition for certiorari and supporting brief in the Chase case, filed simultaneously herewith, in which the questions involved and the reasons for granting the writ are fully stated and briefed.

### Specification of Errors

The court below erred—

1. In holding that respondent is entitled to possession of the entire balance maintained by the Reichsbank with the Federal Reserve.

2. In holding that this case is controlled by *Propper v. Clark*, 337 U. S. 472, instead of *Lyon v. Singer* and *Lyon v. Banque Mellie Iran*, 339 U. S. 841.

3. In refusing to hold that the District Court should have refused to entertain this cause.

4. In affirming the judgment of the District Court and refusing to reverse such judgment and direct dismissal of respondent's petition.

fact that the attached accounts were in the custody and possession of the state court which had levied on them. Apparently, respondent intended the instant case as a test to determine his right to enforce a "res" vesting order in the federal court, even though effective relief could be granted only by the state court which had custody and possession of the *res*. However, the point was never reached in the instant case. The courts below, having found in the Chase case that petitioner's attachment was void, were bound by this holding to find respondent entitled to every right in the attached accounts, including the right to possession of the attached Federal Reserve accounts.

## CONCLUSION

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the U. S. Court of Appeals for the Second Circuit, commanding said Court to certify and send up to this Court, a full and complete transcript of the record, and of all proceedings in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of said Court of Appeals be reversed; and that petitioner may be granted such other and further relief as may be just and proper.

Respectfully submitted,

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